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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 503

COMMISSIONER OF INTERNAL REVENUE, PETITIONER,

vs.

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 15, 1964

CERTIORARI GRANTED DECEMBER 7, 1964

SUPREME COURT OF THE UNITED STATES

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IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14,441

Civil Action (Docket No. 90028)

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS, Petitioners-Appellants,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.

On Appeal from Decision and Judgment of the Tax Court of the United States

Appendix for Petitioners-Appellants.—Filed September 17, 1963

[File endorsement omitted.]

[fol. 2] BEFORE THE TAX COURT OF THE UNITED STATES

RELEVANT DOCKET ENTRIES

Date Mo. Date Yr.	Filings and Proceedings
Nov. 21, 1960	Petition Filed: Fee Paid 11/21/60
• • • • • • •	
Jan. 25, 1961	Amended Petition by petr. filed
Feb. 10, 1961	Answer to Amended Petition filed by resp.
• • • • • • •	
Nov. 28, 1962	Findings of Fact and Opinion filed. Judge Raum Decision under Rule 50.
Jan. 3, 1963	Agreed Computation filed.
Jan. 8, 1963	Decision entered, Judge Raum
• • • • • • •	
April 5, 1963	Petition for Review by USCA, 3rd Cir., filed by petrs.
• • • • • • •	

[fol. 3] BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 90028

IN THE MATTER OF THE ESTATE OF MARSHAL L. NOEL, Deceased, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

AMENDED PETITION—Filed January 25, 1961

The above named petitioners hereby petition for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency bearing symbols Au:R:JB dated August 24, 1960 as amended by

letter dated October 31, 1960 bearing symbols AR C:Ap: PHI Nwk: MM and as a basis of their proceeding allege as follows:

1. The petitioner William H. Frantz is an executor and petitioner, Ruth M. Noel, is substitute executrix under the last will and testament of Marshal L. Noel, the latter hav-[fol. 4] ing been so appointed by the Bergen County Court, Probate Division, Bergen County, New Jersey, on July 27, 1956. Both petitioners have duly qualified and so continue to act as said executors. The petitioner, William H. Frantz, resides at P.O. Box 509, Pinehurst, North Carolina. The petitioner, Ruth M. Noel resides at 286 Mountain Avenue, Ridgewood, New Jersey. The federal estate tax return herein involved was filed with the District Director of Internal Revenue, Newark, New Jersey.

2. The notice of deficiency, a copy of which is attached hereto and marked Exhibit A, was mailed to the petitioners on August 24, 1960.

3. The Commissioner determined a deficiency in the federal estate tax in the amount of $17,298.10, the entire amount of which is in controversy.

4. The determination of tax set forth in said notice of deficiency, as amended, is based upon the following error:

. . . . . .

(b) The Commissioner erroneously determined that the proceeds of Continental Casualty Co. Aviation Flight Policy UPC 19-023256 (Schedule D Item 5) paid to decedent's widow, Ruth M. Noel, in the amount of $62,500 were includable in decedent's taxable estate.

(c) The Commissioner erroneously determined that the proceeds of Fidelity & Casualty Co. of N.Y. Airline Trip Insurance Policy No. 643984 (Schedule D, Item 6) paid to decedent's widow, Ruth M. Noel, in the amount of $62,500 were includable in decedent's taxable estate.

. . . . . .

[fol. 5] 5. The facts upon which petitioners rely as the basis of this proceeding are as follows:

. . . . . .

(b) Decedent at and prior to his death was an officer and stockholder in Maquinarias Bolivar C.A., a Venezuelan corporation which had recently been formed to sell and service large machinery and equipment, primarily of American manufacture, in Venezuela.

(c) The establishment of the business of Maquinarias Bolivar C.A. made necessary frequent trips by decedent between New York City and Venezuela as well as between New York City and other cities in the United States.

(d) Decedent's personal and business interests necessitated considerable travel, both foreign and domestic, which was generally accomplished by commercial air lines.

(e) Decedent was a passenger on an LAV (Venezuelan Airlines) flight which departed from New York International Airport on the evening of June 19, 1956 on route to Caracas, Venezuela. The plane crashed into the Atlantic Ocean off the coast of New Jersey early June 20, 1956. There were no survivors.

(f) As was her custom in connection with her husband's travel, decedent's wife, Ruth M. Noel, drove decedent to New York International Airport from their home at Ridgewood, New Jersey, on the evening of June 19, 1956 and accompanied him into the Airport terminal. Decedent's wife remained with decedent in the Terminal until he boarded the plane. While at the Airport Terminal de- [fol. 6] cedent's wife was present while decedent signed the application for the flight policies No. UPC19-023256 issued by Continental Casualty Co. and No. 643984 issued by Fidelity & Casualty Co. of New York. Each application was signed by decedent, at a desk maintained by or on behalf of the insurance companies, for $62,500.00 which was the maximum coverage then available on each policy.

(g) The application for said policies, to meet the requirements of the insurance companies, were signed by decedent at the instance and request of his wife, Ruth M. Noel, the said designated beneficiary therein immediately prior to his departure from Idlewild International Airport, New York, New York, on the flight resulting in his death.

(h) Decedent directed the agents of the insurance companies to deliver the policies, when issued, to his wife, Ruth M. Noel, who he considered to be the owner thereof in all respects. After issuance the policies were delivered

to decedent's wife, Ruth M. Noel. Decedent never had possession or control of the policies. Mrs. Noel surrendered the policies in connection with her claim as the named beneficiary therein and received $62,500, the death benefit under each policy.

(i) Decedent held no incidents of ownership in the aviation flight policies above referred to.

(j) The said aviation flight insurance contracts do not conform to the parties' agreement in that the provision reserving to the insured the right to change the beneficiary was included in the policies without the consent of decedent. The provisions were contrary to decedent's intention. [fol. 7] (k) All right, title and interest in the said policies was owned and possessed, at all times, by decedent's wife, Ruth M. Noel, the designated beneficiary.

(l) Whatever right, title or interest decedent may have had in the said policies were contemporaneously and irrevocably disposed of by him.

(m) Decedent at no time had possession or control of the said policies.

(n) Even if decedent had any incident of ownership whatever in said policy or policies, it was impossible for decedent, either solely or in conjunction with any other person, to exercise any such incidents of ownership.

* * * * * * * *

Wherefore petitioners pray that this Court may hear the proceeding and determine that there is no deficiency in estate tax.

Edward F. Merrey, Jr., Counsel for Petitioners, 140 Market Street, Paterson 1, New Jersey. Harry Norman Ball, Counsel for Petitioners, 420-30 6 Penn Center, 16 North 17th Street, Philadelphia 3, Pennsylvania.

(Exhibit A, Annexed to Amended Petition, is omitted.)

[fol. 8] BEFORE THE TAX COURT OF THE UNITED STATES

ANSWER TO AMENDED PETITION—Filed February 10, 1961

The Respondent, in answer to the amended petition filed in the above entitled case, admits and denies as follows:

1. Admits the allegations of paragraph 1 of the amended petition.

2. Admits the allegations of paragraph 2 of the amended petition.

3. Admits the allegations of paragraph 3 of the amended petition.

4. (a) to (f) Denies the allegations of paragraphs 4(a) to (f), inclusive, of the amended petition.

5. (a) Denies the allegations of paragraph 5(a) of the amended petition.

(b) to (d) Denies knowledge or information sufficient to form a belief as to the truth of the statements alleged in paragraphs 5(b) to (d), inclusive, of the amended petition.

(e) Admits the allegations of paragraph 5(e) of the amended petition.

(f) Denies knowledge or information sufficient to form a belief as to the truth of the statements alleged in paragraph 5(f) of the amended petition.

(g) to (p) Denies the allegations of paragraphs 5(g) to (p), inclusive, of the amended petition.

6. Denies generally each and every allegation of the amended petition not hereinbefore specifically admitted, qualified, or denied.

[fol. 9] Wherefore it is prayed that the relief sought in the amended petition be denied.

R. P. Hertzog, Acting Chief Counsel, Internal Revenue Service.

Of Counsel: Cecil H. Haas, Regional Counsel, Francis X. Gallagher, Assistant Regional Counsel, John J. Hopkins, Attorney, Internal Revenue Service.

P. O. Box 1279, Newark 1, New Jersey

[fol. 10] BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 90028

ESTATE OF MARSHAL L. NOEL, DECEASED, ETC., Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

Room 300
United States Custom House
Philadelphia, Pennsylvania

Transcript of Testimony—Tuesday, February 6, 1962

Met pursuant to notice, at 2:30 p.m.
Before: Honorable Arnold Raum, Judge.

APPEARANCES:

HARRY NORMAL BALL, ESQ., Six Penn Centre, Philadelphia 3, Pennsylvania, appearing on behalf of Petitioner.

EDWARD F. MERREY, JR., ESQ., 140 Market Street, Paterson, New Jersey, appearing on behalf of Petitioner.

H. DONALD BUSCH, ESQ., Six Penn Centre, Philadelphia 3, Pennsylvania, appearing on behalf of Petitioner.

ALBERT SQUIRE, ESQ., Office of Regional Counsel, Internal Revenue Service, Philadelphia, Pennsylvania, appearing on behalf of Respondent.

[fol. 11] COLLOQUY

(3)* PROCEEDINGS

The Clerk: Docket Number 90028, Estate of Marshal L. Noel, deceased.

Will counsel please state your appearance.

Mr. Ball: Harry Normal Ball for petitioner.

Mr. Squire: Albert Squire for respondent.

Mr. Ball: If it please your Honor, counsel have stipu-

* All figures in parentheses indicate the number of each new page of the stenographic transcript.

lated with most of the matters involved in the deficiency notice and have also stipulated with respect to the remaining matter which involves the includability of the proceeds of accident insurance policies.

In the stipulation there were Exhibits D, E and F which were attached which we have agreed are correct exhibits but I should like to note my objection to the relevance of those exhibits: with the exception of that, the stipulation is correct in other respects.

The question before your Honor is whether or not under the circumstances here the proceeds of so-called single flight accident policies covering the decedent which were taken out at the International Airport prior to a scheduled flight by the decedent to Venezuela and which matured as a result of an accident in which all of the passengers were killed in a crash of the aircraft, whether the proceeds paid to the decedent's wife who was named as beneficiary in the accident policies and whom as we contend, was also a purchaser and owner of the (4) policies, whether or not the proceeds were includable for tax purposes.

It is the petitioner's contention that the policies having been taken out by the decedent's wife, paid for by her, [fol. 12] possession of the policies having been by her, all in accordance with the intention and the agreement of her husband and herself that she should be the owner and have all of the rights under the policy, that under those circumstances, there were no so-called incidents of ownership which are part of the ordinary life insurance policies, and that even if these policies might be equated to life insurance policies, that under those circumstances, the decedent had no incidents of ownership under the proceeds and were not includable.

We contend further that the printed provision of the policies which by their terms reserved the right in the insured to change the beneficiary and for benefits with respect to injuries to the decedent did not repose, those right did not repose in the decedent for the basic reason that it was contrary to his beneficiary and agreement, that he was never asked or acquiesced or authorized that those provisions be inserted and that as a matter of fact there was no way that he had of deleting those provisions at the time of the purchase at the airport from one of the

booths which was installed and operated for that purpose; that in any event, the so-called right to change the beneficiary, for example, was an (5) illusory right and completely of no substance within the meaning of the case because the change could not be affective.

The policies themselves provide that changes may only be affected by the approval of an exclusive officer of the insurers and that the policies would have to be endorsed or endorsement attached and that the insured was physically unable to do that at any time.

First, because the airline flight was a single flight and return and secondly, he did not have the possession of the policies which was a requisite to the policies in order to make those changes.

[fol. 13] The Court: Did these policies cover a one way flight or a round trip?

Mr. Ball: These policies covered a round trip. They included a return. There was a check mark alongside the return.

So, it is our contention that the so-called rights, whatever they may have been under the printed provision, were illusory and ineffective and therefore cannot be considered incidents. I point out to your Honor that even if the insured had time to try to affectuate a change of beneficiary that could not be accomplished because of the fact that the policies were under our contention owned by the wife and that therefore, she could affectively block any change.

As a matter of fact, it is our position that she (6) could have gone into equity to restrain any attempt to block those, that sort of action.

And finally, we are going to suggest to your Honor that there is a basic difference between the accident coverage involved in these policies and life insurance in the general sense of life insurance. First of all, there is no requirement of the underwriting concepts or requirements which are applicable to life insurance. Under life insurance, not only is there a cash value and a surrender value—not only are the underwriting concepts based on the age of the insured, based on his occupation, based on his moral status in the community, and many other things involving underwriting, whereas in these policies of accident, none of those things are of any importance at all.

Actually there is a difference in concept because in an accident policy, the contingency is the accident and it makes no difference whether the insured dies or does not die [fol. 14], if there is no accident. So that the contingency is accident and incidents is that of death whereas under a life insurance policy, the contingency is the death and the accident might be incidental.

I suggest to your Honor that there is a fundamental difference and that we are intending that this coverage was not life insurance within the meaning of the provision of the code.

The Court: The Government's case depends upon this (7) being pre-death life insurance.

Mr. Ball: I think so, your Honor.

The Court: So you feel that if a passenger who had taken out a policy such as this had died of a heart attack in mid air, the policy would not cover him?

Mr. Ball: There would be no recovery whereas under any life insurance policy as such, there would be recovery and the provision of the code with respect to the includability of life insurance proceeds are an exception to the general rule that only the actual assets of the decedent's estate are includable. And when the code talks about life insurance, I suggest that it is life insurance in the regular meaning of that term.

The Court: I don't know whether you can make anything out of it or not but both companies are called casualty companies rather than life insurance companies.

Mr. Ball: That is correct, sir. We expect to show in the evidence that they had no authority to write life and that sort of thing.

Mr. Squire: If your Honor please, it is the respondent's position that the two aircraft accident insurance policies in question were issued to Mr. Noel, the decedent, that he did not assign the policies to a wife, nor did he transfer all of the incidents of ownership in the policy to his wife, [fol. 15] but that if the Court should hold that he did (8) transfer all of the incidents of ownership to his wife, then it is respondent's position that such transfer was revocable and it is also respondent's position in this case that such transfer was a gift in contemplation of death.

That concludes respondent's opening statement.
Mr. Ball: Mr. Fohl, please.

RICHARD G. FOHL, was called as a witness on behalf of the petitioner, and having been first duly sworn, testified as follows:

The Clerk: Would you state your name and your home address.
The Witness: The name is Richard G. Fohl. The home address is Hemlock Drive, Brookville, Long Island, New York.
The Clerk: That was Richard G.?
The Witness: G.

Direct examination.

By Mr. Ball:

Q. What is your occupation?
A. I am President of Airport Sales Corporation.
Q. And how long have you been connected with that company?
A. Thirteen years.
Q. And what does that company do?
A. We specialize in the sale of air travel accident insurance.
(9) Q. And you are also familiar with ordinary life insurance policies in the general sense of that term?
A. Yes.
[fol. 16] Now, Mr. Fohl, what connection did your company have with the issuance of the accident policies in this case?
A. Are you speaking of both policies; the one by the Fidelity and Casualty as well as the Continental Casualty?
Q. You are familiar with the accident policies involved here, one by the Continental and one with the Fidelity?
A. Yes.
Q. All right.
Will you state whether or not your company had anything to do with the issuance of the Continental policy?

A. Yes, we were the agent.

Q. And what about the Fidelity?

A. The same is true there.

Q. And where did you conduct your business?

A. In connection——

Q. In the sale of this kind of coverage?

A. Well, we are represented all over the country, both through booths which are staffed by persons and sell what we call personalized insurance, and then insurance vending machines.

Q. Now, the policies in question were taken out at a booth, were they not?

(10) A. That's correct.

Q. And can you tell us whether or not there was any machinery set up at that booth for the change of any of the policy provisions?

A. There was not.

Q. Now, can you tell us whether or not the clerks who were authorized to issue these contracts were required to ask the applicant whether or not he desired a reservation to change the beneficiary?

A. There was no such provision.

Q. Now, can you tell us approximately how many policies of this kind are issued domestically every year?

A. On the average, approximately about between seven and eight million.

Q. And are these policies known as single trip policies?

A. Well, more specifically we refer to them as a specific trip policy as opposed to a short term *on* annual policy.

[fol. 17] Q. Are you able to state whether or not there was any appreciable number of changes in the beneficiaries on these policies after they were issued?

A. With regards to the specific trip policy, the requests were very, very infrequent.

Q. Well, when you say, "very, very infrequent," are you talking about less than a hundred, less than ten, less than five? If it is possible, we would like to get a general idea (11) of what actually happens in these situations?

A. I would say they were less than ten and I know of no specific instances that I can remember of any names or anything of that nature.

Q. Are you talking about the time period for that num-

ber of ten, is the year 1956 or 1956 up to date, or just what period are you talking about?

A. I am talking about—in that regards to my over all experience in the field.

Q. And that would be over 13 years?

A. Yes, sir.

Q. Now, can you state, to your knowledge, whether or not the Continental was authorized, and I am now talking about the company which issued the policy in this case, was authorized to write life insurance?

A. The Continental Casualty Company is not authorized to issue life insurance.

Q. Now, what about the Fidelity Casualty Company of New York; is that authorized to is-ue life insurance?

A. To the best of my knowledge, no.

Q. Can you tell us whether these policies are subject to approval by any insurance commission?

A. Yes, sir.

Q. And can you tell us whether or not they are approved as a form of accident coverage?

(12) A. Yes, they are considered accident and health coverage.

Q. Now, would you be good enough to tell us very briefly what are the basic differences between life insurance and this kind of coverage with respect to the requirements, the underwriting concepts and requirements and so forth?

A. Well, the major differences, of course, is in connec-

[fol. 18] tion with life insurance. This can be related to any and all types of death regardless of cause, natural act or what have you. In the case of an accident policy, the death must be caused by accident and in this particular instance, it is even more limited. It must be caused by a specific type of accident which is an aircraft accident.

Q. Can you tell us whether or not the health factor of an applicant is important in life insurance?

A. Yes.

Q. Is it important or requisite of any kind in connection with this accident coverage?

A. Not this type of accident coverage, no.

Q. What about the occupation of an applicant; is that important in life insurance?

A. Yes.

Q. Is it of any importance or subject of any requirement in this accident type of policy?

A. No, it is not.

(13) Q. What about the moral status of an applicant for insurance? Is that necessary or important in a life policy?

A. It is considered important, yes,

Q. What about an accident coverage?

A. No.

Q. Now, are you able to state whether in the insurance industry that this kind of accident coverage is called or considered life insurance?

A. I am relatively sure that it is not considered life insurance by the industry and most specifically not by Continental or myself.

Q. Do you know in your experience whether or not life insurance is used extensively in estate planning?

A. From various literature that I have read, yes.

Q. And to your knowledge, does this accident coverage ever figure in the estate planning?

A. Not this type.

Q. Now, to your knowledge, Mr. Fohl, was it possible with respect to these policies to effect a change of beneficiary without the endorsement of the policy?

A. No, it would have to be endorsed.

Mr. Ball: I suppose we can agree that the precise provisions are contained in both policies?

[fol. 19] Mr. Squire: I don't know what you mean by that but I would think as far as the policy says, it speaks for itself.

(14) By Mr. Ball:

Q. Do these policies contain standard provisions?

A. Yes.

Q. And as approved by an Insurance Commissioner?

A. Yes.

Mr. Ball: Cross-examination.

Before you begin, may I indulge to ask one more question?

The Court: Yes.

By Mr. Ball:

Q. To your knowledge, Mr. Fohl, on June 19, 1956, was any executive of either Continental or Fidelity present at the International Airport?

A. Not to my knowledge.

Mr. Ball: All right.

Cross-examination.

By Mr. Squire:

Q. Are you a member of an actuary society, Mr. Fohl?

A. No, sir.

Q. Do you hold any degree as an actuary?

A. No.

Mr. Squire: No further questions.

The Court: Do you have any redirect of the witness?

Mr. Ball: No, sir.

The Court: You may step down.

(15) (Witness excused.)

Mr. Ball: Mrs. Noel, please.

[fol. 20] Ruth Noel was called as a witness on behalf of the petitioner, and, having been first duly sworn, testified as follows:

The Clerk: Would you state your name and your home address, please.

The Witness: Ruth Noel, 286 Mountain Avenue, Ridgewood, New Jersey.

The Clerk: Thank you.

Direct examination.

By Mr. Ball:

Q. Mrs. Noel, you are the widow of Marshal L. Noel?

A. I am.

Q. And you are co-executrix of his estate?

A. Yes.

Q. And you resided with your husband prior to his death in Ridgewood, New Jersey?

A Yes.

Q. And you still reside in Ridgewood, New Jersey?

A. I do.

Q. It has been stipulated that your husband was killed in an airplane crash on June 20, 1956. How old was your husband in 1956?

A. He was 49.

(16) Q. And will you state the names of yours and his children and their ages at that time, that is in 1956?

A. Well, there was Patricia, 19; Sharon, 17; and Marsha, 10.

Q. Now, what business was your husband in at that time?

A. Well, he was Vice-President and part owner of Maquinarias Bolivar.

Q. And was that a Venezuela company, to your knowledge?

A. That's right, it was.

Q. And was company business, to your knowledge, the reason for his trip?

A. Yes.

Q. What kind of business did that company do?

A. Well, it sold heavy machinery, road building and mining.

Q. And do you know what your husband was going down specifically for?. I think you said he went down for the [fol. 21] business of the company.

A. That's right, to fulfill orders and just to take care of his business.

Q. What was the condition of your husband's health?

A. It was very good.

Q. And what about his disposition?

A. That was equally good.

Q. Can you tell us about his ambition or plans for the (17) future, if you know?

A. Well, of course, he had a great many plans for the future. In so far as he had started the business in Venezuela, he had business in Texas. He was going back and forth constantly, taking care of all of them, doing his best to get more business.

Q. Was he a devoted husband and father?

A. Yes, he was.

Q. Now, on the evening of June 19, 1956, you and your husband drove to the airport, had you not?

A. That's right, yes, we did.

Q. Now, who drove the car?

A. I did.

Q. And can you tell us whether or not you remained with him until the ill-fated plane took off?

A. I did.

Q. And it has been stipulated that the plane took off about 10:16 and crashed about two hours later. Did you leave for home after the plane took off?

A. Yes, I did.

Q. And that was immediately?

A. Yes.

Q. Now, Mrs. Noel, I show you photostats of the policies which were referred to here.

(The documents were shown to the witness.)

(18) The Court: Are those copies of Exhibit 1-A and 2-B?

Mr. Ball: Yes, your Honor.

By Mr. Ball:

Q. And I ask you whether you were present when these polices were taken out?

A. Yes, I was.

[fol. 22] Q. And where were they taken out?

A. They were taken out at the Idlewild National Airport.

Q. Who took out those policies?

A. I did.

Q. And did you see Marshal fill in the blanks——

A. Yes, I did.

Q. (Continuing)—on these policies?

A. Yes.

Q. And who paid for them?

A. I did.

Q. Now, were the policies issued right then and there?

A. Yes.

Q. And what happened to them physically?

A. Well, he signed them and then they had to be given back to the clerk, I think, for some sort of stamping and then he told— I don't remember whether the clerk was a man or woman— he told them to give them to me as they now belonged(19) to me and he had nothing more to do with them.

Q. And did you at that time get the policies physically?

A. Yes, I did.

Q. And did you take the policies home with you?

A. Yes.

Q. And were they or were they not in your possession until——

A. They were.

Q. (Continuing) —until after today?

A. They were.

Q. Now, at the counter, did you—or prior to that time, did you have any further discussion or conversation with Marshal about these policies?

A. Well, it was just that I had asked him to have them taken out, that he was doing an awful lot of air traveling and I was a little worried about it and if anything happened, we would be protected.

Q. Now, did he make any statement at the time that the policies were handed over to you with respect to whether or not you owned the policies?

A. Oh, yes, as I said, he said that, give them to my wife. They are hers now, I no longer have anything to do with them.

Q. Following the death of your husband, you eventually (20) collected on these policies, did you not?

A. Yes, I did.

[fol. 23] Mr. Ball: Cross-examination.

Mr. Squire: May I have a moment, you Honor?

The Court: Yes.

Cross-Examination.

By Mr. Squire:

Q. Now, Mrs. Noel, did you state on direct examination when you were married to Mr. Noel?

A. I don't beleive so.

Q. Would you please state it now?
A. Yes. I was married August 27, 1932.
Q. And you are a co-executor of his estate?
A. Yes.
Q. And as co-executor, you were one of the people who signed the Estate Tax Return which was filed with the United States?
A. I believe so.
Q. And with the Estate Tax Return, there was filed a copy of Mr. Noel's Will?
A. Yes.
Q. Do you recall when that Will was made out?
A. No, I do not.
Q. Well, if I showed you a copy of the Will, would that help to refresh your memory?

(21) Mr. Squire: Do you want to see it?
Mr. Ball: Yes.

(The document was shown to Mr. Ball and to the witness.)

Mr. Squire: You may take your time to look at it.
The Witness: All right. Thank you.

By Mr. Squire:

Q. Can you tell from that copy the date of the Will?
A. Yes, I can.
Q. What was that date?
A. September 18, 1948.
Q. Thank you.
And you were the sole beneficiary of Mr. Noel's under that Will, were you not?
A. Yes.

[fol. 24] Q. You mentioned in answer to a question by Mr. Ball that your husband was a Vice-President and part owner of a Venezulean company?
A. That's right.
Q. Now, in 1956 did he have any other business interests?
A. Yes, he did.
Q. Can you name some of them?
A. Well, he owned a company down in Bay City, Texas

and was connected with Frantz Tractor Company in New York.

Q. Do you know what this company in Bay City which he (22) owned, do you know what this company did?

A. Yes, it was a land clearing organization.

Q. And what was the other company that you said that he—Frantz Tractor Company—was he an officer of that company?

A. I don't remember whether he was still an officer. I believe he was but I am not sure. I wouldn't be positive about it.

Q. All right——

The Clerk: Respondent's Exhibit G marked for identification.

(The document referred to was marked for identification as Respondent's Exhibit No. G.)

By Mr. Squire:

Q. Mrs. Noel, after the airplane accident, you did file an Income Tax Return for the year 1955 for yourself and for Mr. Noel?

Mr. Ball: May I see it?

Mr. Squire: After she identifies it.

By Mr. Squire:

Q. I show you Respondent's Exhibit G, and ask you if this is a copy of that Return?

[fol. 25] (The document was shown to the witness.)

A. Yes, I think it is. Yes.

Q. Thank you.

(23) Now, the 1955 Return shows wages or salary income of $10,000 from a company called the Equipment Investors, Incorporated, New York City. Do you know anything about that company?

A. Yes, I do. I had forgotten about it when I mentioned the others.

Q. And was Mr. Noel an officer of that company?

A. Yes, he was.

Q. And do you know what the business of that company was?

A. Well, a financial business.

Q. Financial?

A. Any further explanation of it I don't believe I could make right at this time.

Mr. Squire: I offer in evidence Respondent's Exhibit G.

Mr. Ball: I object to it, sir. It appears to be Income Tax Return of the decedent and his wife for the year 1955 which precedes by a considerable period of time any of the matters involved in this case and I therefore see no relevance to it and object on that ground.

Mr. Squire: If that is the reason Mr. Ball gives for objecting to the exhibit, the exhibit shows that it was filed, it was signed by Mrs. Noel on October 15, 1956, after the date of the accident, and was filed on that date.

(24) The Court: What is the purpose of the exhibit?

Mr. Squire: The purpose of the exhibit is to give the Court an idea of Mr. Noel's business activities in order to show that he appears to have been well versed in business transactions.

Mr. Ball: I will admit to that, sir.

The Court: I will receive the exhibit.

[fol. 26] The Clerk: That is Respondent's G.

(The document previously marked for identification as Respondent's Exhibit G was received in evidence.)

By Mr. Squire:

Q. Mrs. Noel, I would like you to please try to recall the period about—around the time of this last airplane trip. You said that it was on company business.

How long had Mr. Noel been planning this trip?

A. Well, that would be very difficult to say. He made so many trips. He made one or two a month back and forth to Venezuela.

Q. Do you recall how long he was home before he made this last trip?

A. Probably a month.

Q. Do you recall whether the trip was one which he had to take on very short notice?

A. No.

(25) Q. It was not?

A. No.

Q. Now, you were the beneficiary of the two policies in question?

A. Yes, I was.

Q. Mr. Noel had other policies of life insurance on his life to which you were the beneficiary?

A. Yes.

Q. Were you the owner of any of these other policies?

A. No, I was not.

Q. Did you pay the premium on any of these other policies?

A. No, I didn't.

Q. Now, one of the policies under which Mr. Noel was insured was a Maryland Casualty Company aviation accident policy in which you were the beneficiary and in which the face amount was $50,000. Is that correct?

A. That's right.

Q. When you submitted a claim for the proceeds of that policy, you furnished the policy to the company, did you not?

A. Yes.

Mr. Squire: May I have this marked for identification? [fol. 27] The Clerk: Respondent's Exhibit H marked for identification.

(26) (The document referred to was marked Respondent's Exhibit H for identification.)

By Mr. Squire:

Q. Mrs. Noel, I show you Respondent's Exhibit H and ask you whether that is the Maryland Casualty Company policy under which you received $50,000 as beneficiary?

A. Yes, sir, it is.

Q. Thank you.

Mr. Squire: Did you want to see it?

Mr. Ball: Yes.

(The document was handed to Mr. Ball.)

Mr. Squire: I offer in evidence Respondent's Exhibit H.

Mr. Ball: I object to it, sir. This policy is not involved

in the instant proceeding. That policy was—the proceeds of that policy were returned for tax purposes and have not been questioned.

The Court: What is the purpose of the offer?

Mr. Squire: The purpose of this offer is to show that the decedent owned an aviation accident policy which was not a trip policy but a term policy which the ownership of which he did not transfer to Mrs. Noel.

The Court: Why is that relevant here?

Mr. Squire: Because, your Honor, one view of the issue in the case is whether Mr. Noel assigned the two (27) policies in question to Mrs. Noel. The only evidence of whether he may have done so is Mrs. Noel's oral testimony. She is the sole witness to what happened at that [fol. 28] airport. She is an interested witness, as well. It seems logical to respondent, your Honor, that if Mr. Noel had shown some conduct consistent with that, that would be some evidence to corroborate Mrs. Noel.

Ordinarily we can show—we show many instances of inconsistent evidence with that, and we think that is some evidence to show that he did not make the assignment and he did not state the words that Mrs. Noel says he did.

The Court: I will admit the exhibit merely to round out the picture.

Mr. Ball: All right. May I suggest to your Honor then that we add to the record, without devoting any more time than is necessary to it, such other records as are in court with respect to that policy because I think basically that policy was taken out by a company with which Mr. Noel was associated and—

The Court: You may on direct or through other witnesses present to the Court such evidence as you think will further complete the picture.

Mr. Ball: Thank you, sir.

The Court: I might inquire of you at this point though, whether in your view of the concept of life insurance, (28) whether the proceeds of this policy, that is the Maryland Casualty policy should have not similarly be excluded from the gross estate. To be sure, it is quite a different kind of a casualty policy but in view of your contention with respect to the nature of life insurance, I wonder where this policy fits into the picture.

Mr. Ball: Well, that policy is a little bit different from the policies involved in the matter before your Honor in that it is a loan return policy and longer term policy and therefore the possibility of creating a change during the [fol. 29] term of the policy is more of a practical consideration—

The Court: Don't let me interrupt you. I am not inquiring with respect to the power of the change of the beneficiaries, I am inquiring as to the nature of the insurance itself, whether it is life insurance on the one hand or some other kind of insurance in the other hand.

Directing yourself to that limited question, how does this Maryland Casualty Company policy differ from these others?

Mr. Ball: I think it is easily allied with it and probably the same principle should apply.

The Court: This may not be the point to comment upon it but I hope both counsel on brief will give me whatever rulings or decisions there have been with respect to (29) whether accident insurance may under certain circumstances be treated as life insurance.

Mr. Ball: I should like to develop that before your Honor as much as possible. As a matter of fact, I think there is just one case—

The Court: Well, this is a matter for briefs and just make sure that it is covered.

Mr. Ball: I am glad your Honor is interested in the problem.

By Mr. Squire:

Q. Now, Mrs. Noel, with respect to the two policies in question, after you were told about the accident, some time after that, you made claims under these policies, did you not?

A. Yes, I did.

The Clerk: Respondent's Exhibit I and Exhibit J marked for identification.

[fol. 30] (The documents referred to were marked for identification as Respondent's Exhibit I and J.)

By Mr. Squire:

Q. Now Mrs. Noel, I show you respondent's Exhibit I and ask you whether this is a copy of the Claim Form you filed with the Continental Casualty Company for the proceeds of the policy issued by that company?

(The document was shown to the witness.)

A. Yes, it is.

(30) Mr. Squire: I offer in evidence Respondent's Exhibit I.

The Court: It may be admitted.

(The document previously marked for identification as Respondent's Exhibit I was received in evidence.)

By Mr. Squire:

Q. Mrs. Noel, I show you Respondent's Exhibit J, and ask you whether this is a copy of the Claim form you filed with the Fidelity and Casualty Company of New York for the proceeds of the policy issued by that company?

(The document was shown to the witness.)

A. It is, yes.

Mr. Squire: I offer in evidence Respondent's Exhibit J.

The Court: Admitted.

(The document previously marked for identification as Respondent's Exhibit J was received in evidence.)

[fol. 31] By Mr. Squire:

Q. Now Mrs. Noel, you stated before that it was you who paid the premiums on the two policies in question. Did you also purchase Mr. Noel's airplane ticket?

A. No, I did not.

Q. How did it happen that it was you who paid the (31) premiums on these policies?

A. Just one of those things. I always did it every time he took out insurance, the airport insurance, I did.

Mr. Squire: I have no further questions of Mrs. Noel.

Redirect Examination.

By Mr. Ball:

Q. Mrs. Noel, to your knowledge, did or did not your husband have an air credit card with the airlines?

A. Yes, he did.

Q. Do you know whether that happened to be a personal card or company card? Do you happen to know that?

A. I don't know, no.

Q. Now, Exhibits I and J, which have been shown you and which you identified as containing your signature, can you tell us where and who prepared these forms for you?

A. Well, I think my attorneys did them.

Q. And your attorney is——

A. Yourself, Mr. Harry Ball and Mr. Merrey, Jr.

Q. And would you recall whether or not these were prepared up in New Jersey?

A. I believe they were prepared in New Jersey.

Q. Now, you were questioned about a Maryland Casualty policy. Would you know whether or not that policy was issued in connection with aviation policies issued for the employees (32) of the Frantz Company?

A. I believe it was. I wouldn't be too sure.

Mr. Ball: No further questions.

[fol. 32] Recross-Examination.

By Mr. Squire:

Q. Mrs. Noel, just a moment or two ago you referred to a Mr. Merrey?

A. That's right.

Q. How is that spelled?

A. M-e-r-r-e-y.

Q. And is that Mr. Merrey present in the courtroom?

A. Yes, he is.

Mr. Squire: I have no further questions.

(Witness excused.)

Mr. Ball: Will your Honor indulge me for just one moment? We may be able to stipulate with respect to this matter.

(Mr. Ball and Mr. Squire consult.)

Mr. Ball: I think we can save a few minutes, if your Honor please, by putting something on the record.

I proposed to request a stipulation from the Government—

The Court: Have you agreed upon a stipulation between yourselves?

Mr. Ball: Yes, I think we have, sir but——

(33) The Court: I just don't want you negotiating on the record. May your agreements between yourselves off the record and then you may come back on the record and state for the Court what you have agreed.

Mr. Ball: Well, I think we have agreed. I will put it this way: It is stipulated that the Maryland Casualty Company policy, copy of which has been offered in evidence, was issued as part of a group passenger accident air insurer. II, renewal order, made by a corporation designated as an employer, namely, Frantz Equipment Company, covering employees, a group of employees which included the decedent, Marshal L. Noel.

[fol. 33] Mr. Squire: Except for the fact that the policy was an original policy, I will so stipulate.

The Court: Very well.

Mr. Ball: And Mr. Squires wishes me to stipulate that the parties have further agreed to stipulate for the best of the Court, should question arise to the Court, that the Maryland Casualty Company policy on its face does not appear to extend to the date of this accident but there was a renewal of that particular policy which caused it to extend and to cover the date of this accident.

Now, if your Honor will indulge me for just one moment, I will——

My I recall Mr. Fohl for just a moment?

(34) The Court: You may.

RICHARD G. FOHL was recalled as a witness on behalf of the petitioner, and having been previously duly sworn, testified as follows:

Redirect Examination.

By Mr. Ball:

Q. Mr. Fohl, Mr. Squires referred a few minutes ago to an assignment of policies of this kind and I ask you whether on June 19, 1956 at the International Airport there were any forms of any kind which were available for making assignments of the accident coverage?

A. No, there were no forms available for that purpose.

Q. Can you tell us when forms of that kind did become available for general use? What year?

A. This year.

Mr. Ball: That's is all.

Mr. Squire: I have no cross-examination, your Honor.

[fol. 34] COLLOQUY

Mr. Ball: We rest, sir.

Mr. Squire. May I have a short recess, you Honor?

The Court: Very well. Off the record.

(A short recess was taken.)

The Court: On the record.

Mr. Ball: May it please your Honor, during the (35) recess we have found in the files of United States Aviation Underwriters, Inc., which caused the issuance of that Maryland policy in the record, we have found the original application of the employer and the specific application involving Mr. Noel's policy and I should like to leave, if your Honor will permit, to add these to the record and if your Honor grants that leave, then I should like leave to withdraw these originals and substitute photostats so that I can give the originals back to Mr. Gallagher.

The Court: Well, I think there are too many photostats already. I would prefer to have the originals remain in the record.

Is counsel aware upon the conclusion of the litigation

that the exhibits may be withdrawn under the rules of the Court?

Mr. Ball: Excuse me, your Honor.

Is that satisfactory to you, Mr. Gallagher?

Mr. Gallagher: Yes, sir, it is agreeable to me.

The Court: The Clerk may staple them and receive them as a single exhibit.

The Clerk: It will be Petitioner's Exhibit Number 3.

(The document referred to was marked for identification as Petitioner's Exhibit No. 3 and was received in evidence.)

[fol. 35] Mr. Squire: I have no objection, your Honor.

And the Government has no further evidence to (36) introduce, your Honor.

Mr. Ball: That is it, sir.

The Court: Will you gentlemen approach the bench?

(Bench conference.)

The Court: Opening briefs in 45 days. Reply briefs in 15 days.

The Clerk: 45 days for the original briefs will be due March 23, 15 days thereafter the reply will be due April 9.

The Court: The Court is adjourned.

(Whereupon, at 4:10 p.m., the trial in the above-entitled matter was adjourned.)

[fol. 36] BEFORE THE TAX COURT OF THE UNITED STATES

EXCERPTS FROM EXHIBIT 1-A (APPLICATION OF INSURANCE AND POLICY OF INSURANCE OF CONTINENTIAL CASUALTY COMPANY)

[fol. 37]

APPLICATION FOR INSURANCE
MUST BE COMPLETED AT TIME OF PURCHASE

NAME OF INSURED	MARSHAL L. NOEL	
ADDRESS OF INSURED — Street	316 GREENWAY ROAD	
City	RIDGEWOOD	
State	N.J	
NAME OF BENEFICIARY	MRS ML NOEL (RUTH)	RELATIONSHIP TO INSURED: WIFE
Flight destination	PORT-DRDAZ, VZ.	And return flight ☑
Signature of Applicant (Applicant must sign his or her name)	Marshal Noel	

SCHEDULE

Principal Sum $62,500 — Premium $2.50

Date and hour of inception JUN 19 10 08 PM '56

Zone of Flight

Countersigned Resident Agent

Point of departure

UPC 190 23256

CONTINENTAL CASUALTY COMPANY

General Offices: Chicago, Illinois

A STOCK COMPANY • HEREIN CALLED THE COMPANY

HEREBY INSURES the person named in the first line of the application (herein called the Insured) and subject to the exceptions, limitations and provisions of this policy, promises to pay for loss resulting from injury; to the extent herein limited and provided. "Injury" wherever used in this policy means bodily injury caused by an accident occurring while this policy is in force and resulting directly and independently of all other causes in loss covered by this policy and sustained during the first one way flight or return flight described in the Schedule occurring on or after the inception date and hour shown in the Schedule; provided such injury is sustained in consequence of (a) riding as a passenger in, boarding, alighting from or being struck by an aircraft operated on a regular, special or charter flight by (1) a scheduled airline of

XXX

Part 1. POLICY PROVISIONS. ENTIRE CONTRACT; CHANGES: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

XXX

CHANGE OF BENEFICIARY: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

XXX

CONFORMITY WITH STATE STATUTES: Any Provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

IN WITNESS WHEREOF, the Continental Casualty Company has caused this policy to be signed by its President and Secretary; but the same shall not be binding upon the Company until countersigned by its duly authorized agent.

Thos. R. Sears

Paul ...

NAME OF INSURED	MARSHALL L. NOEL	
ADDRESS OF INSURED — Street	316 GREENWAY ROAD	
City	RIDGEWOOD	
State	N.J.	
NAME OF BENEFICIARY	MRS ML NOEL (RUTH)	RELATIONSHIP TO INSURED: WIFE
Flight destination	PORT-DRDAZ, VZ.	And return flight ☑
Signature of Applicant (Applicant must sign his or her name)	Marshall Noel	

Point of departure

Countersigned Resident Agent

Date and hour of inception JUN 19 10 08 PM '56

Principal Sum $62,500 — Zone of Flight — Premium $2.50

19023256

CONTINENTAL CASUALTY COMPANY

General Office: Chicago, Illinois

A STOCK COMPANY • HEREIN CALLED THE COMPANY

HEREBY INSURES the person named in the first line of the application (herein called the Insured) and subject to the exceptions, limitations and provisions of this policy, promises to pay for loss resulting from injury; to the extent herein limited and provided. "Injury" wherever used in this policy means bodily injury caused by an accident occurring while this policy is in force and resulting directly and independently of all other causes in loss covered by this policy and sustained during the first one way flight or return flight described in the Schedule occurring on or after the inception date and hour shown in the Schedule; provided such injury is sustained in consequence of (a) riding as a passenger in, boarding, alighting from or being struck by an aircraft operated on a regular, special or charter flight by (1) a scheduled airline of

XXX

Part 2. POLICY PROVISIONS. ENTIRE CONTRACT; CHANGES. This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

XXX

CHANGE OF BENEFICIARY: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

XXX

CONFORMITY WITH STATE STATUTES: Any Provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

IN WITNESS WHEREOF, the Continental Casualty Company has caused this policy to be signed by its President and Secretary; but the same shall not be binding upon the Company until countersigned by its duly authorized agent.

John A. Henry
Secretary

Ray Trautman
President.

Printed in U.S.A.

[fol. 38] BEFORE THE TAX COURT OF THE UNITED STATES

EXCERPTS FROM EXHIBIT 2-B (APPLICATION FOR INSURANCE AND POLICY OF INSURANCE OF THE FIDELITY AND CASUALTY COMPANY OF NEW YORK).

[fol. 39]

ASSOCIATED AVIATION Underwriters

No 643984

90 John Street, New York 38, New York

DO NOT PURCHASE MORE THAN A TOTAL OF $62,500 PRINCIPAL SUM—NOR FOR TRAVEL ON OTHER THAN SCHEDULED AIR CARRIERS. THIS POLICY COVERS ON ONE-WAY TRIP ONLY UNLESS ROUND TRIP TICKET IS PURCHASED BEFORE DEPARTURE.

I hereby apply to Company named below for Scheduled Air Carrier Trip (Airline Trip) Insurance to insure me on one airline trip as follows:

Name of Applicant (Please Print): MARSHAL L. NOEL			
Beneficiary: Name RUTH NOEL		Street Address 316 Greenwall Rd	
Beneficiary: City Ridgewood		State NJ	
Point of Departure: New York	Destination: Port Orta		Trip to Be Made On ☐ One-Way ☑ Round Trip Ticket
Date 6-19-1956	Principal Sum $62,500.	Premium $2.50	Personal Signature of Applicant: Marshal L Noel

Countersigned By Resident Agent: Richard D. Foth Per

The Fidelity and Casualty Company of New York

(A Stock Company, hereinafter called the "Company")

In consideration of the payment of the premium and subject to the exceptions, limitations, reductions and other provisions of this policy, hereby insures the person whose name appears above as Applicant, hereinafter called the Insured, as follows:

1. INSURING CLAUSE: Ticket or Pass Requirement. The Company will pay the benefits specified below if during the term of this policy the Insured suffers loss resulting directly and independently of all other causes from accidental bodily injury (hereinafter referred to as "such injury"), sustained under circumstances specified below during the first one-way or round airline trip taken by the Insured after the purchase of this policy on Aircraft Operated by a Scheduled Air Carrier as defined below from the Point of Departure to the Destination, both shown above, and return if round trip ticket is obtained before departure, provided that at the time that the Insured sustains such injury he is traveling on a transportation ticket or pass covering the whole of said airline trip, issued to him for transportation on an aircraft operated by a scheduled air carrier.

XXX

2. POLICY PROVISIONS. Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

XXX

Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

XXX

Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the State in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary and countersigned by its duly authorized agent, but it shall not be binding upon the Company

follows:

Name of Applicant (Please Print): MARSHAL L. NOEL			
Beneficiary: Name RUTH NOEL		Street Address 316 Grogan Way Rd	
City Ridgewood		State NJ	
Point of Departure: New York	Destination Port Orta		Trip to Be Made On ☐ One-Way ☑ Round Trip Ticket
Date 6-19-1956	Principal Sum $2,500.	Premium $2.50	Personal Signature of Applicant: Marshal L Noel

Countersigned by Resident Agent: Richard S. Johns Per _____

The Fidelity and Casualty Company of New York

(A Stock Company, hereinafter called the "Company")

In consideration of the payment of the premium and subject to the exceptions, limitations, reductions and other provisions of this policy, hereby insures the person whose name appears above as Applicant, hereinafter called the Insured, as follows:

1. INSURING CLAUSE: Ticket or Pass Requirement. The Company will pay the benefits specified below if during the term of this policy the Insured suffers loss resulting directly and independently of all other causes from accidental bodily injury (hereinafter referred to as "such injury"), sustained under circumstances specified below during the first one-way or round airline trip taken by the Insured after the purchase of this policy on Aircraft Operated by a Scheduled Air Carrier as defined below from the Point of Departure to the Destination, both shown above, and return if round trip ticket is obtained before departure, provided that at the time that the Insured sustains such injury he is traveling on a transportation ticket or pass covering the whole of said airline trip, issued to him for transportation on an aircraft operated by a scheduled air carrier.

XXX

2. POLICY PROVISIONS. Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

XXX

Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

XXX

Conformity with State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the State in which the Insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary and countersigned by its duly authorized agent, but it shall not be binding upon the Company unless the application is signed personally by the Applicant.

Secretary _____ President _____

[fol. 40] BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 90028

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

DECISION AND JUDGMENT—Entered January 8, 1963

Pursuant to the opinion of the Court filed November 28, 1962, and the agreed computation of tax liability filed by the parties; and incorporating herein the facts recited in the computation as the findings of the Court, it is

ORDERED AND DECIDED: That there is a deficiency in estate tax due from the petitioners in the amount of $14,040.16.

s/ Arnold Raum, Judge.

* * * * * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and the agreed computation of the parties, and that the Court may enter this decision, without prejudice to the right of either party [fol. 41] to contest the correctness of the decision entered herein, pursuant to the statute in such cases made and provided.

It is further stipulated that the petitioners may claim credit for State estate, inheritance, legacy or succession taxes, and may present to the Internal Revenue Service proof of such payment within the statutory period.

Edward F. Merrey, Jr., Counsel for Petitioners, Harry Norman Ball, Counsel for Petitioners, Crane C. Hauser, Chief Counsel, Internal Revenue Service.

* * * * * * *

(Computation figures, etc., annexed, are omitted.)

BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 90028.

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

39 T. C. No. 44

FINDINGS OF FACT AND OPINION—Filed November 28, 1962.

1. Proceeds of so-called flight or accident insurance paid to beneficiary upon death of airline passenger *held* in- [fol. 42] cludable in decedent's gross estate as "insurance under policies on the life of the decedent". Sec. 2042 (2), I.R.C. 1954. *Leopold Ackerman*, 15 B.T.A. 635, followed.

2. Decedent's right to change beneficiary in such policies *held* not destroyed by delivery of the policiesto beneficiary in the circumstances of this case; decedent had requisite incident of ownership within Section 2042(2).

Harry Norman Ball, Esq., and *Edward F. Merrey, Jr., Esq.*, for the petitioners.

Ibert Squire, Esq., for the respondent.

Respondent determined a deficiency in estate tax in the amount of $17,298.10.

The question for decision is whether respondent erred in including in the gross estate of Marshal L. Noel the amount of $125,000, which represented the proceeds of two policies of air travel accident insurance paid to his wife, the beneficiary named in the policies, after his death in an airplane accident.

FINDING OF FACT

Some of the facts have been stipulated, and, as stipulated, are incorporated herein by reference.

Marshal L. Noel, the decedent, died on June 20, 1956 when the airplane in which he was a passenger crashed into the Atlantic Ocean. The estate tax return was filed with the

district director of internal revenue for the district of Newark, New Jersey.

The decedent was 49 years old at his death and a resident of Ridgewood, New Jersey. He was employed in New [fol. 43] York City at substantial salaries by Frantz Tractor, Inc. and Equipment Investors, Inc. He was owner of Noel Company, a business in Bay City, Texas, that dealt in farm equipment and did land clearing on a contract basis. He was also vice president and part owner of a Venezuelan company, Maquinarias Bolivar, that sold heavy road building and mining machinery. He frequently made business trips to Venezuela. It was on such a trip that the airplane accident occurred which caused his death.

On the evening of June 19, 1956, decent's wife, Ruth M. Noel (hereinafter sometimes referred to as Ruth), drove her husband by automobile from their home in Ridgewood, New Jersey, to the New York International Airport (known as Idlewild) in New York, New York, where he was to board an airplane bound for Venezuela. At the airport, after purchasing his airplane ticket, decedent applied in writing for two policies of air travel accident insurance, each in the principal sum of $62,500, and each naming him as the person insured, at a booth maintained for the sale of such policies by Airport Sales Corporation, a sales agent. Decedent made separate written applications for each policy; one, for a policy in which Continental Casualty Company (hereinafter referred to as Continental) was the insurer; the other, for a policy in which The Fidelity and Casualty Company of New York (hereinafter referred to as Fidelity) was the insurer.

The last line of the application form for the Continental policy contained the printed words: "Signature of Applicant—(Applicant must sign his or her name)". Decedent signed his name on this line.

The application for the Fidelity policy contained the following printed statement immediately above the lines to be filled in by the applicant:

> [fol. 44] I hereby apply to Company named below for Scheduled Air Carrier Trip (Airline Trip) insurance to insure me on one airline trip follows:

The first line of this application contained the printed words: "Name of applicant (Please Print)", Decedent's name is printed by hand on this line. The last line of this application contained the printed words: "Personal Signature of Applicant". Decedent signed his name on this line

Both applications named Ruth as beneficiary and stated that the trip to be covered by the insurance was a round trip flight from New, York, New York, to Puerto Ordaz, Venezuela. The premium paid for each policy was $2.50. Ruth is the sole beneficiary of the decedent's estate.

After the applications were signed by decedent he gave them to the sales clerk who validated them. Upon decedent's instructions the clerk handed the policies to Ruth. She kept them in her custody until after her husband's death.

Each policy provided for payments by the insurer in specified amounts in respect of certain bodily injuries sustained by the insured as a result of an accident while a passenger on his round trip (either to or from Venezuela), and each policy also provided for payment of the principal sum ($62,500) in the event of loss of life in such accident.

Each policy contained the following provision entitled "Payment of Claims":

> Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the state of the Insured. Any [fol. 45] other accured indemnity unpaid at the Insured's death may, at the option of the Company, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the Insured.

Each policy contained the following provisions:

> Policy Provisions. Entire Contract; Changes: This policy, including the endorsements and the attached papers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the Company and unless such approval be endorsed hereon or attached

hereto. No agent has authority to change this policy or to waive any of its provisions.

* * * * * * *

CHANGE OF BENEFICIARY: The right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

* * * * * * *

CONFORMITY WITH STATE STATUTES: An Provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

The Continental policy contained the following provision:

[fol. 46] This policy takes effect on the inception date and hour stated in the Schedule and terminates upon completion of the one way flight or return flight described in the Schedule or twelve months after said inception date and hours, whichever occurs first, Standard Time at place of issue as to each date.

The Fidelity policy contained the following provision:

5. POLICY TERM. This insurance shall commence on the day and hour shown above and shall terminate either upon completion of the above described airline trip or upon expiration of or surrender for refund or credit of, the transportation ticket hereinbefore referred to, but in no event shall this insurance extend beyond a period of twelve months.

The decedent was not asked whether he wished to reserve the right to change the beneficiary, nor was there any procedure available at the insurance booth to change any provision of the policies. The clerk at the booth was not authorized to vary any of the terms of the policies.

After the purchase of the two insurance policies in question the decedent boarded an airplane bound for Caracas, Venezuela, on a regular scheduled non-stop flight. The airplane left New York International Airport at 10:16 p.m., E.S.T., on June 19, 1956. Ruth returned to her home with the policies.

Less than three hours later, at 12:31 a.m., E.S.T., on June 20, 1956, the airplane in which decedent was a passenger crashed into the Atlantic Ocean. All on board were killed.

On June 25, 1956 Ruth signed claim forms for the insurance payable under the two policies. The forms were filled in for her by her attorneys.

[fol. 47] Continental's claim form was entitled "AFFIDAVIT OF CLAIMANT FOR INDEMNITY FOR DEATH OF". Question 2 asked: "Do you claim indemnity as beneficiary, executor, administrator, guardian, trustee or assignee?" This question was answered: "Beneficiary."

Fidelity's claim form was entitled "Statement of Beneficiary". At the bottom of this form, immediately beneath the line on which Ruth affixed her signature, is a line, close under which was printed: "Official capacity of Claimant if claim is made in such capacity." This line was left blank.

The principal sums of the two policies, totalling $125,000, were received in due course by Ruth from the insurance companies. This amount was not included in decedent's gross estate in the estate tax return filed by the executors of his will.

OPINION

RAUM, *Judge*: The $125,000 proceeds of the two insurance policies were paid over to the decedent's widow as a consequence of his death. The issue before us is whether such proceeds were includable in his gross estate under Section 2042 of the Internal Revenue Code of 1954 which provides:

> The value of the gross estate shall include the value of all property—
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> . . . . . .
>
> (2) Receivable by other beneficiaries.—To the extent of the amount receivable by all other beneficiaries

as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person.
* * *

[fol. 48] 1. At the out set we are met by petitioner's contention that the policies in question are not "policies on the life of the decedent" within the meaning of the statute. Petitioner argues that these policies are of the type often characterized as "accident insurance" or "flight insurance", and do not possess many of the features of what is commonly referred to as "life insurance." But the question raised is no longer open.

A similar contention was rejected some 33 years ago in *Leopold Ackerman*, 15 B.T.A. 635, where it was held that amounts paid on account of accidental death under accident policies were amounts received "as insurance under policies taken out by the decedent upon his own life" within Section 302(g) of the Revenue Act of 1924. The 1954 Code before us, although significantly different in other respects, is substantially identical in relation to the question whether the accident policies constitute "insurance * * * on the life of the decedent". While recognizing that there are distinctions between life insurance and accident insurance, Ackerman nevertheless held that both may be "upon the life" of the insured. "In each case the risk assumed by the insurer is the loss of the insured's life, and the payment of the insurance money is contingent upon the loss of life". 15 B.T.A. at p. 637. It is too late to raise the issue herein. The matter has been settled for too long a period to warrant reexamination. The statutory provisions involved are substantially identical as they relate to this question. We follow *Ackerman* here.

2. We pass therefore to consider whether the insurance proceeds are otherwise covered by Section 2042(2). Our inquiry is simply whether, in relation to these policies, "the decedent possessed at his death any of the incidents of [fol. 49] ownership, exercisable either alone or in conjunction with any other person." These provisions ap-

peared for the first time in the 1954 Code. Whether the policies were "taken out" by the decedent or whether he paid the premiums are no longer the touchstone of taxability under the new statute. Both the House and Senate Committee reports accompanying the legislation contained the following statement:

> • • • This section revises existing law so that payment of premiums is no longer a factor in determining the taxability under this section of insurance proceeds. Insurance proceeds payable to the executor will continue to be taxes as under existing law. This section also requires the inclusion in the decedent's estate of insurance proceeds receivable by all other beneficiaries under a policy on the decedent's life with respect to which the decedent at death possessed any of the incidents of ownership exercisable either alone or in conjunction with any other person. • • •

H. Rept. No. 1337, 83rd Cong., 2d Sess., p. A316; S. Rept. No. 1622, 83rd Cong. 2d Sess., p. 472.

Did the decedent herein possess any of the incidents of ownership in the two policies before us? An examination of both policies requires an unequivocally affirmative answer. In each policy there is a paragraph entitled "Change of Beneficiary", in each of which the following appears:

> Change of Beneficiary: The right to change of beneficiary is reserved to the Insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

[fol. 50] It is argued by petitioner that the foregoing provision in the policies was merely "boiler plate", that the decedent did not desire any such right, and that he could not have obtained the policies without such provision. Granted that all this be true, it does not advance petitioner's position. Whether or not the right to change the beneficiary was "boiler plate", it was part of the contractual relationship with each insurance company and

defined a legal right of the decedent.[1] The right to change beneficiaries is one of the recognized "incidents of ownership", and accordingly the statute is applicable.

Nor is a different result required by reason of the contention that the decedent's wife paid the premiums or that the policies were "assigned" to her. To be sure, we heard testimony that she paid the premiums, but we were not entirely convinced, and since taxability under the 1954 Code does not depend upon who paid the premiums, we have not made any finding one way or the other as to this matter.[2] To establish an assignment, the decedents wife testified that the decedent told the clerk at the airport to give the policies to her, that they "now belonged" to her, and that "he had [fol. 51] nothing more to do with them." We think that the delivery of the policies to her in such circumstances hardly establishes an assignment. It must be recalled that the policies contained provisions for insurance in respect of various bodily injuries short of death, and in such circumstances we are not convinced that petitioner intended to part with all rights in the policies. Rather, the testimony, even if strictly accurate suggests merely that the decedent was indulging in a common practice of giving physical possession of the policies to the beneficiary so that, in the event of a fatal accident, she would be in a position to assert her rights under the policies. We do not find that by these oral statements, the decedent intended to make any irrevocable disposition of all his rights

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[1] This is not a case of erroneous provisions in the policies or the inclusion of provisions which resulted from unauthorized action by an insurance agent, which might have been corrected by reformation of the policies after they were issued. Cf. *Schongalla* v. *Hickey*, 149 F. 2d 687 (C.A. 2), and *National Metropolitan Bank* v. *United States*, 87 F. Supp. 773 (C. Cls.), relied upon by petitioner.

[2] In any event, in this connection, even if it be assumed that she paid the premiums, cf. *Fried* v. *Granger*, 105 F. Supp. 564 (D.C. W.D.Pa.), affirmed per curiam 202 F. 2d 150 (C.A. 3); *Hall* v. *Wheeler*, 174 F. Supp. 418 (D. Maine); *Estate of Michael Collino*, 25 T.C. 1026.

under the policies,[3] even assuming that he could legally do so in that manner.[4]

Petitioner makes further contention that the right to change the beneficiary was illusory since, as a practical [fol. 52] matter, the decedent would have been unable to exercise that right during flight. The argument proves too much. The same would be true with respect to any policy of life insurance, and the mere fact that the insured at the moment of death might be temporarily incapacitated from exercising his rights has never been thought to vitiate the effect of such retained rights. Cf. *Estate of Edward L. Hurd*, 6 T.C. 819, affirmed 160 F. 2d 610 (C.A. 1); *Estate of Virginia H. West*, 9 T.C. 736, affirmed 173 F.2d 505 (C.A. 8); *Estate of Charles S. Inman*, 18 T.C. 522, reversed on other grounds, 203 F. 2d 679 (C.A. 2); Rev. Rul. 61-123, 1961-2 Cum. Bull. 151. Moreover, it must be remembered that the policies were not limited to accident on a one-way voyage; they covered a *round trip*, and in the normal course the right to change the beneficiary would have been meaningful prior to commencement of the return trip. Of course, decedent's wife was in possession of the policies, and to the extent that her acquiescence may have been

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[3] Compare in this respect *Franklin Life Insurance Company* v. *Falkingham*, 229 F. 2d 300 (C.A. 7), where the physical delivery of a policy to the insured's wife was held not to be an assignment even where such delivery was accompanied by the following declaration (p. 304):

> * * * Here, Honey, is your insurance. Take it and keep it. You are the *beneficiary*. And never let it go, regardless of what happens to me. It is yours.

[4] We accordingly do not consider whether such alleged oral assignment would have been valid under the law of New York where the delivery of the policies occurred and where such assignment was alleged to have taken place. Cf. *McNamee* v. *Griffin*, 285 App. Div. 886, 137 N.Y. Supp. 749, affirmed 309 N.Y. 864, 131 N.E. 2d 284; *Katzman* v. *Aetna Life Ins. Co.*, 285 App. Div. 446, 137 N.Y. Supp. 583, reversed 309 N.Y. 197, 128 N.E. 2d 307.

necessary in order to effectuate a change of beneficiary[5] such circumstances would not render the statute inapplicable. For the statute speaks in terms of incidents of ownership "exercisable either alone or in conjunction with any other person." And the unrestricted words " in conjunction with any other person" include persons having an adverse beneficial interest. *Helvering* v. *City Bank Farmers Trust Co.*, 296 U.S. 85; *Hall* v. *Wheeler*, 174 F. Supp. 418, 421 (D Maine).

We hold that the proceeds of the two policies in controversy are includable in the decedent's gross estate.

Decision will be entered under Rule 50.

[fol. 53] BEFORE THE TAX COURT OF THE UNITED STATES

Docket No. 90028

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

PETITION FOR REVIEW—Filed April 5, 1963

The Estate of Marshal L. Noel, William H. Frantz and Ruth M. Noel, Executors, hereby petition for a review by the United States Court of Appeals for the Third Circuit of the decision of the Tax Court in the above matter filed January 8, 1963 finding a deficiency in the Estate Tax in said Estate.

The Estate Tax return in connection with the aforementioned Estate was filed with the District Director of Internal Revenue at Newark, New Jersey.

Dated: April 4, 1963.

Edward F. Merrey, Jr., Attorney for Petitioners.

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[5] The change of beneficiary clause in both policies provides, however, that "the consent of the beneficiary * * * shall not be requisite * * * to any change of beneficiary * * *."

[fol. 54] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14,441

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, Executors, Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE, Respondent.

On Petition for Review of Decision of the Tax Court of the United States

Argued December 2, 1963

Before: STALEY, GANEY and SMITH, *Circuit Judges*.

OPINION OF THE COURT—Filed June 17, 1964

By SMITH, *Circuit Judge*.

This case is here on a petition to review a decision of the Tax Court. The principal question for decision is whether the proceeds of an air flight insurance policy paid to the designated beneficiary are includible in the gross estate of the decedent under § 2042(2) of the 1954 Internal Revenue Code, 26 U.S.C.A. § 2042(2). The question is admittedly one of novel impression not wholly free of difficulty.

[fol. 55] The pertinent provisions of the cited statute read as follows:

> "The value of the gross estate shall include the value of all property——
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> . . . . . .
>
> "(2) . . . To the extent of the amount receivable by . . . beneficiaries as INSURANCE UNDER POLICIES ON THE LIFE OF THE DECEDENT with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person." (Emphasis supplied).

The answer to the question here raised depends on the construction to be given the term "insurance under policies on the life of the decedent," which is not defined by the Code. The term "insurance" is defined by regulation as "life insurance of every description, including death benefits paid by fraternal benefit societies operating under the lodge system." 26 C.F.R. § 20.2042-1. We find this definition of little assistance in the instant case.

The decedent, immediately prior to enplaning on a round trip to Venezuela, made written application for two flight insurance policies, each in the amount of $62,500. The premiums, in the total amount of $5, were paid by his wife, the named beneficiary, to whom the policies were delivered upon issuance. The policies, dissimilar in some minor respects but otherwise in the usual form, insured against loss of life or specified bodily injury [1] suffered by the insured as the result of an aircraft accident occurring during any part of the flight. In the event of the insured's death the benefits were payable to the designated beneficiary, and in the event of bodily injury the benefits were payable to the insured. Each policy reserved to the insured the right to assign it or to change the beneficiary [fol. 56] therefore without the consent of the beneficiary originally designated. These were exercisable incidents of ownership within the meaning of the statute.

While en route to Venezuela, and within a few hours after departure from the airport, the plane on which the decedent was a passenger crashed into the Atlantic Ocean, killing all on board. The widow of the decedent, asserting a right to the proceeds of the policies as the designated beneficiary thereunder, filed the required proofs of claim on the basis of which she received the benefits. The petitioners, executors of the decedent's estate, filed the required estate tax return but failed to include in the gross estate of the decedent the amounts received by the beneficiary under the said policies. The respondent, having found that the proceeds of the policies were includible in

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[1] The policies provided for the payment of a special amount for each of several enumerated injuries and for the payment of the principal sum in the event of accidental death.

the gross estate of the decedent, determined that there was a deficiency in respect to the taxes due and gave written notice thereof to the petitioners.

The determination of the deficiency was sustained by the Tax Court in the decision here on review. The decision rests solely on the case of Leopold Ackerman v. Commissioner, 15 B.T.A. 635, decided in 1929. Therein the Board of Tax Appeals held that the term "policies taken out by the decedent upon his own life," as used in § 302(g) of the Revenue Act of 1924, referred not only to ordinary life insurance policies but also to accident policies which covered the risk of accidental death as well as bodily injury. We are of the view that this construction was erroneous, as is the decision of the Tax Court in the instant case.

It is a settled rule of construction that where a term employed in a statute is not therein defined, the term must be given its ordinary, plain and generally accepted meaning. Crane v. Commissioner, 331 U.S. 1, 6 (1947); Old Colony R. Co. v. Commissioner, 284 U.S. 552, 560 (1932); United States v. Merchants National Bank of Mobile, 261 F. 2d 570, 575 (5th Cir. 1958); Torti v. United [fol. 57] States, 249 F. 2d 623, 625 (7th Cir. 1957). This conventional rule is particularly applicable where, as here, we are called upon to interpret a provision of the Internal Revenue Code, Ibid., and the application of the rule will not lead "to an unreasonable result plainly at variance with the policy of the legislation as a whole." See Ozawa v. United States, 260 U.S. 178, 194 (1922); Acheson v. Fujiko Furusho, 212 F. 2d 284, 295 (9th Cir. 1954).

While life insurance and accident insurance possess certain features common to both, there is a commonly understood and well defined distinction between them. The dominant purpose of the policy as reflected by the risk or contingency insured against is usually determinative of the nature of the insurance. Bowles v. Mutual Ben. Health & Accident Ass'n., 99 F. 2d 44, 48, 49 (4th Cir. 1938); Baumann v. Preferred Accident Ins. Co. of New York, 122 N.E. 628, 629 (Ct. App. N.Y. 1919); see also Couch, Cyclopedia of Insurance Law, § 34; Appleman, Insurance Law and Practice, § 392. The policies here in question must be judged by this determinant.

A life insurance policy is a contract by the terms of which the insurer, in return for the payment of the prescribed premiums, agrees to pay a specified sum upon the occurrence of an inevitable event. The contingency insured against is the death of the insured regardless of its cause unless, of course, the cause is one excepted under the policy. Oglesby-Barnitz Bank and Trust Co. v. Clark, 175 N.E. 2d 98, 103 (Ct. App. Ohio, 1959); Orr v. Prudential Ins. Co. of America, 174 N.E. 204 (Sup. Jud. Ct. Mass., 1931); Couch and Appleman, supra. Life insurance has several economic and investment features not common to accident insurances. Upon issuance of the policy the insurer assumes an absolute risk of loss and the insured acquires an immediate estate which by the terms of the policy is transferrable on his death.[2] See Chase Nat. Bank [fol. 58] v. United States, 278 U.S. 327 (1929). The purpose of § 2042(2), supra, as well as its earliest counterpart, infra, was to bring such estates within the reach of the revenue laws for reasons hereinafter discussed.

An accident policy, particularly of the type here in question, is a contract by the terms of which the insurer agrees to indemnify the insured in case of bodily injury, or the designated beneficiary in case of the death of the insured, for any loss sustained by reason of an event which is evitable and not likely to occur. The contingency insured against is the accident, death being only one of several liability creating consequences. See the authorities cited in the preceding paragraph. Upon issuance of the policy the insurer assumes a conditional risk of loss and the insured, as well as the beneficiary, acquire nothing more than an inchoate and defeasible right. An accident policy which provides for the payment of the principal sum in the event of the insured's accidental death is not thereby converted into a life policy; such a feature does not alter the essential nature of the insurance.

A further aid to construction is the history of the enactment which clearly indicates the intent of Congress and the purpose of the legislation, preponderating guides to the interpretation of statutory phrases of doubtful

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[2] This assumes that the policy remains in force and there is compliance with its terms and conditions.

meaning. Harrision v. Northern Trust Co., 317 U.S. 476, 479, 480 (1943); United States v. Amer. Trucking Ass'ns., 310 U.S. 534, 543, 544 (1940); Holy Trinity Church v. United States, 143 U.S. 457 (1892); J. C. Penney Company v. C.I.R., 312 F. 2d 65, 68 (2nd Cir. 1962); City of Newark v. United States, 254 F. 2d 93, 97, 98 (3rd Cir. 1958). The statutory provision here in question emerged from a comparable provision contained in the Revenue Act of 1918, infra, which we consider in the light of the mischief sought to be corrected and the end sought to be attained.

The estate tax as a permanent source of revenue was adopted by the Revenue Act of 1916, and particularly [fol. 59] §§ 201 and 202 thereof,[3] 39 Stat. 777 and 778. Section 202 defined the items of real and personal property includible in the gross estate of the decedent for tax purposes but made no specific reference to the proceeds of life insurance policies. Such proceeds were includible in the estate only to the extent of the amount receivable by the executor in his fiduciary capacity. As a result of this deficiency the impact of the estate tax on the proceeds of life insurance policies could be avoided by the simple expedient of making such proceeds payable to a specific beneficiary other than the executor.

The deficiency, soon recognized by Congress, was corrected by the enactment of § 402(f) of the Revenue Act of 1918, 40 Stat. 1097, 1098, which read in pertinent part as follows:

> "That the value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property real or personal, tangible or intangible, wherever situated. . . .
>
> • • • • • • • •
>
> "(f) To the extent of the amount receivable by the executor as insurance under policies taken out by the decedent upon his own life; and to the extent of the excess of $40,000 of the amount receivable by all other beneficiaries as insurance under policies taken out by the decedent upon his own life."

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[3] The estate tax as a source of revenue was resorted to earlier only in critical periods of emergency.

The obvious intent of Congress and the purpose of the enactment was to foreclose the possibility of tax avoidance under the existing law.

The Committee on Ways and Means of the 65th Congress submitted a report [4] in which it stated:

> "The provision with respect to specific beneficiaries has been included for the reason that insurance [fol. 60] payable to such beneficiaries usually passes under a contract to which the insurance company and the individual beneficiary are the parties in interest and OVER WHICH THE EXECUTOR EXERCISES NO CONTROL. Amounts passing in this way are not liable for expenses of administration or debts of the decedent and therefore DO NOT FALL WITHIN THE EXISTING PROVISIONS DEFINING THE GROSS ESTATE. It has been brought to the attention of the Committe THAT WEALTHY PERSONS HAVE AND NOW ANTICIPATE RESORTING TO THIS METHOD OF DEFEATING THE ESTATE TAX. Agents of insurance companies have openly urged persons of wealth to take out additional insurance payable to specific beneficiaries for the reason that SUCH INSURANCE WOULD NOT BE INCLUDED IN THE GROSS ESTATE. A liberal exemption of $40,000 has been included and it seems not unreasonable to require the inclusion of amounts in excess of this sum." (Emphasis supplied).

Section 402(f), supra, was retained without change as a part of the federal estate tax law until it was amended by § 404(g) of the Revenue Act of 1942, 56 Stat. 944, which became § 811(g) of the Internal Revenue Act of 1939, 26 U.S.C.A. The amendment changed the test of "includibility" [5] and in effect placed the proceeds of life insurance policies payable to designated beneficiaries on a par with other property transferrable on the death of the decedent.

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[4] Revenue Act of 1918, 65th Congress, 2d Session, House Report 767, p. 22.

[5] The new tests of includibility were: (a) the payment of premiums "directly or indirectly by the decedent," and (b) the "incidents of ownership" possessed by the insured at his death.

Section 2042(2), supra, follows substantially the 1942 Act except that it eliminates as a test of "includibility" the payment of premiums "directly or indirectly by the decedent." The purpose of this last provision, like that of its earliest predecessor, is to foreclose resort to the purchase of life insurance as a means of tax avoidance.

[fol. 61] We are of the opinion, and so hold, that the term "insurance under policies on the life of the decedent" does not comprehend insurance under accident policies of the kind here in question. We are of the further opinion that any other construction, particularly the one here urged by thhe respondent, would lead to an unreasonable result at variance with the intent of Congress and the manifest purpose of the statute as a whole.

The decision of the Tax Court will be reversed.

[fols. 62-64] IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 14,441

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS, Petitioners,

vs.

COMMISSIONER OF INTERNAL REVENUE, Respondent

On Petition to Review a Decision of the Tax Court of the United States

Present: STALEY, GANEY and SMITH, *Circuit Judges.*

JUDGMENT—June 17, 1964

This cause came on to be heard on the record from Tax Court of the United States, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court that the decision of the

said Tax Court in this cause be, and the same is hereby reversed.

June 17, 1964

[File endorsement omitted.]

[fol. 65] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 66] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1964

No. 503

COMMISSIONER OF INTERNAL REVENUE, Petitioner,

v.

ESTATE OF MARSHAL L. NOEL, DECEASED, WILLIAM H. FRANTZ AND RUTH M. NOEL, EXECUTORS.

ORDER ALLOWING CERTIORARI—December 7, 1964

The petition herein for a writ of certiorari to the United States Court of Appeals for the Third Circuit is granted, and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1964 758300 699